
FCC Enforcement Monitor

by Scott R. Flick and Emily J.H. Daniels

FCC Fines California Television Station \$25,000 for Failure to Make Emergency Information Accessible to Individuals with Hearing Disabilities

The FCC recently fined a California television station \$25,000 for failing to make emergency information accessible to individuals with hearing disabilities in a timely manner. In October 2003, wildfires in the San Diego area spread rapidly, propelled by high winds, causing the evacuation of many San Diego residents. During this time, the station broadcast emergency information regarding the wildfires and evacuations. Subsequently, a complaint was filed against the station alleging that it failed to make information on the wildfires accessible to persons with hearing disabilities.

Section 79.2 of the FCC's Rules requires that video programming distributors include any emergency information being aired in the audio portion of their programming and provide persons with hearing disabilities visual access to that same emergency information. The rule does not require the use of closed captioning for such information, permitting stations to use such methods as open captioning, crawls, scrolls, maps, or signs as long as the critical details of the emergency information are conveyed. In response to an FCC Letter of Inquiry, the station provided videotapes of its coverage. The Enforcement Bureau reviewed these tapes and found numerous instances where the station aurally provided emergency information but substantially delayed the visual presentation of that information. The Enforcement Bureau identified 22 examples where the stations delayed visual presentation of emergency information for greater than 30 minutes after the same information was provided aurally. Accordingly, a fine of \$25,000 was proposed.

The station responded, arguing that it should not be subject to the proposed fine. In addition to contesting the individual violations, the station generally contended that professional journalists act as "filters" in deciding what information constitutes the "critical details" of an emergency for purposes of providing the information to individuals with a hearing disability. The Commission disagreed, finding that the filtering role of the station ends when emergency information is presented aurally. Once this information is conveyed to the public at large, it must also be conveyed pursuant to Section 79.2 of the Rules. After rejecting the station's arguments, the \$25,000 fine was upheld.

FCC Fines Three Radio Stations for Failing to Maintain a Complete Public Inspection File

The FCC recently fined three radio stations for violations of the public inspection file requirements. In the first case, the FCC fined an Arkansas radio station for failure to maintain a public inspection file. In response to a request made during business hours, the station's general manager was unable to locate or make available any part of the station's public inspection file. Ultimately, the general manager was unable to find any evidence that the public inspection file had ever existed at the main studio. The station's owner

was subsequently also unable to provide any information regarding the status or location of the station's public inspection file.

Section 73.3526 of the FCC's Rules requires broadcast stations to maintain certain materials for public inspection. Based on the station's failure to comply with this Rule, the FCC proposed a fine of \$10,000. The station's licensee requested reduction of the fine for two reasons. First, the station asserted that it had been the licensee of the station for only a short period of time prior to the inspection. The FCC found that the licensee had operated the station for over five months and had ample time to assemble its public inspection file. Second, the licensee asserted that imposition of the forfeiture would pose a financial hardship. After examining the financial documentation submitted by the licensee, the Commission agreed that financial hardship would be imposed by a \$10,000 fine and reduced the fine. Accordingly, a fine of \$1,000 was imposed.

In the second case, the licensee of two co-located Texas radio stations was fined \$8,000. In February 2008, Enforcement Bureau agents conducted an inspection of the stations' main studio. The agents asked to inspect the public inspection file for each station. The public inspection files presented did not contain any quarterly issues/programs lists. No one at the station was able to produce the lists, and there was no evidence that the lists had ever been created.

Section 73.3526(e)(12) of the FCC's Rules requires that a list of programs that have provided a radio station's most significant treatment of community issues during the preceding three month period be placed in the public inspection file on a quarterly basis. The list must include a brief narrative describing the issues addressed as well as the time, date, duration, and title of each program in which the issue was addressed. Based on the stations' failure to maintain these lists, a fine of \$8,000 was imposed.

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